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| 10/613,467 | 07/03/2003 | David Myr | MAK-105US | 4935 |
| 7590 05/01/2008 | | | | |
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| OYEBISI, OJO O | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,467

Applicant(s)

MYR, DAVID

Examiner

OJO O. OYEBISI

Art Unit

3696

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 6-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 6-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

In view of the Appeal Brief filed on 10/04/07, PROSECUTION IS HEREBY REOPENED. To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 3 and 6-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed,

does not provide support for the invention as is now claimed i.e., **an optimization choice module**, for each of the trading strategies, for generating optimized trading parameters, by selecting one or more of the number of respective trading parameters **so that at least one of the respective trading parameters is prevented from being included in the optimized trading parameters**. More specifically, the specification, as originally filed, does disclose "optimization techniques examine all possible combinations of indicators and parameters trying to find out a best model (an optimal model). The current optimal model, its factors and coefficients, are being perpetually verified bar-by-bar based on the latest trading data. Each bar's trading data is used as an input for optimization technique, and a new optimal model is being determined. Then the optimal parameters of the found model are entered back into the trading strategy, and new Buy/Sell signals are generated based on the newly determined optimal model. i.e., a Machine Learning mechanism is taking previously determined optimal models, their parameters, components and trading results as an input for building a new model that will produce new improved Buy/Sell signals", but not **an optimization choice model** wherein **at least one of the respective trading parameters is prevented from being included in the optimized trading parameters**.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1, 3, and 6-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane (US PAT 6,317,728) in view of Freeny, Jr (US PAT: 6,594,643).

Re claim 1. Kane discloses a multi channel Machine Learning trading system for generating number of independent trading strategies (i.e., agents) for respective securities, the multi-channel learning trading system comprising: a data Feed module for receiving real-time and historical trading data on the securities from a remote data server (i.e., data acquisition system, see the abstract, also see col.17 lines 3-12); an optimization choice module, for each of the trading strategies, for generating optimized trading parameters, by selecting one or more of the number of respective trading parameters so that at least one of the respective trading parameters is prevented from being included in the optimized trading parameters, such that the optimized trading parameters include respective trading parameters that predict a price movement of the respective securities in the trading strategy according to an optimization technique, based on the historical trading data (i.e., WEALTH WIZARD, Wealth Wizard.RTM. manages the portfolio in real time to optimize profit or cut loss. The primary reasons to

drop a position are: The target is met and the stock is now reversing (considered a win) The position has done poorly and reached a dump (considered a loss) (cut loss) point The position has not moved significantly after a (considered a push) system determined amount of minutes The target is not met but the stock is reversing (win or loss depending from its best price. on sale price) The end of the trading period is reached (day or (win or loss depending multi-day) on sale price). The classification of a position as win or loss (good decision or bad decision) is important in the learning process. The trading system monitors a portfolio of securities in real time, executing buy, sell, sell short and buy to cover trades automatically. The system cuts losses on adverse positions while riding gains on positive positions. The system is targeted to intra-day trading, a method of trading well suited to computer automation. A combination of real time monitoring of a portfolio of stocks and no holding of positions overnight (trading flat) can shield an investor from loss while maximizing gain. The system performs the kind of careful, tireless monitoring required, giving the user a daily return on this investment while minimizing risk, see col.9 line 62 - col.10 line 30) and a multi-channel machine learning module independently generating building respective self-optimized buy/sell trading signals for each of the trading strategies by further optimizing the respective optimized trading parameters for each of the trading strategies, based on respective trading results from the real-time trading data (see fig.16 and fig.17, also see col.11 lines 60-66 " carry Forward the Learning During replays (training runs against historical data), a sequence of days is run many times. If the profit is improved upon during a run, the agent values that were in effect at the time

of the run are kept, and the agent knowledge base is updated. During live runs with real trading dollars, the system continually updates itself, thereby adapting to changing market conditions. This is highly unique among trading systems.”). **Kane** does not explicitly disclose a trading software module comprising: a trading strategy building module for building the number of independent strategies and generating independent respective buy/sell trading signals, based on a number of respective trading parameters used to build each of the trading strategies; the trading parameters being different for each trading strategy, and a multi-channel automatic execution platform for transferring the respective self-optimized buy/sell trading signal for each of the trading strategies simultaneously through a number of parallel programming connection channels from a computer trader's to one or more computerized exchanges, automatically and completely without human intervention. However, **Freeny** discloses a trading software module (i.e., instructions/algorithm) comprising: a trading strategy building module for building the number of independent strategies and generating independent respective buy/sell trading signals, based on a number of respective trading parameters used to build each of the trading strategies; the trading parameters being different for each trading strategy (i.e., The predetermined trading criteria include instructions, such as buy and sell orders, or algorithms capable of being used to analyze investment data to generate a trade request to buy and/or sell one or multiples of an investment item or products. For example, the predetermined trading criteria can be an instruction to buy and/or sell a stock at a predetermined price. In addition, multiple instructions (predetermined trading criteria) can be entered into the individual

trading computer 16 to form a trading sequence relating to the same or different investment items. For example, a predetermined trading criterion to buy 100 shares of a stock at \$50.00 and another predetermined trading criterion to subsequently sell the 100 shares of the same stock at \$55.00 can be entered into the individual trading computer 16 before the predetermined trading criterion to buy the 100 shares of stock at \$50.00 has been executed. The predetermined trading criteria can then be sequentially executed if the stock's market price drops to \$50.00 and then rises from \$50.00 to \$55.00. The algorithm can be any algorithm and/or program capable of analyzing investment data to produce the trade request, such as a commercially available investment algorithm, see col.3 lines 22-45), a multi-channel automatic execution platform for-transferring the respective self-optimized buy/sell trading signal for each of the trading strategies simultaneously through a number of parallel programming connection channels from a computer trader's to one or more computerized exchanges, automatically and completely without human intervention (i.e., The data interface 12 is shown in more detail in FIG. 2. The data interface 12 basically comprises an investment item data receiver and storage unit 40 which receives signals from an interface unit 42 via a communication link 44. The investment item data receiver and storage unit 40 can be a model M1365117T obtainable from Data Broadcast Corporation. The interface unit 42 can be a receiver antenna and the data source(s) 20 can be a local radio station which receives real time investment item quotes from a satellite station (not shown) sent from an investment item exchange, for example. In one embodiment, the investment item data receiver and storage unit 40

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can receive real time investment item data on all investment items listed at investment item trading exchanges all over the world, see col.5 lines 5-25) (see the abstract and the summary of the invention). Thus it would have been obvious to one of ordinary skill in the art to combine the teachings of Kane and Freeny in order to minimize the costs of submitting the trade request signal (i.e., buying or selling investment items).

Re claim 3. Kane further discloses the system, further comprising means of choosing if each of the buy/sell trading signals is executed as a market order, a limit order, a stop or an order of different predetermined type individually for each trading strategy (see fig.1 element 11, also see fig.2)

Re claim 6. Kane further discloses the system of claim 1, further comprising means of choosing if each of the buy/sell trading signals is executed on a partial order execution cases or all-or-none execution basis individually for each different trading strategy; the means of handling partial order execution cases and readjusting the system when partial order execution occurs (see col.12 lines 17-30, also see fig.11).

Re claim 7. Kane further discloses the system of claim 1, further comprising a hard-disk residing database and a computer storage means for storing and accounting trader's profit/loss information according to execution details of each of the buy/sell trading signals, independent of an additional bank or brokerage accounting system and in addition to own profit/loss accounting system of a bank/brokerage (i.e., (6) Record Trade Data and Account History: (185) When the system wakes up in the morning, it interrogates the brokerage account to obtain available capital, available margin, and other relevant information. The system then proceeds to trade against the account, and

records the results of the trades including the reasons each position was taken and exited, and all relevant tax and economic data. All data is time stamped for later audit. For example the prevailing price at the time of an order and the price the order is filled at are both recorded and time stamped, see col.11 lines 11-20).

Re claim 8. Claim 8 recites similar limitations to claim 1 and thus rejected using the same art and rationale as in claim 1 supra.

Re claims 9-11. Kane further discloses the system, further comprising means of choosing an execution trading strategy for each of the trading channels corresponding to the connection channels a number of strategies (i.e., decision logic and executing device, see fig.1 elements 14 and 11, see col.3 lines 10-60), according to strategy performance parameters including at least of a profit/loss, a volatility, or a maximal drawdown (see col.10 lines 35-66).

Re claim 12. Kane does not explicitly disclose the system, further comprising a multi-channel means of choosing different execution channels for different trading strategies, from a list of available order execution channels, i.e. multi-channel means for choosing through which execution channel each order will be sent to a specific market for each specific trading strategy. However, Freeny discloses a multi-channel means of choosing different execution channels for different trading strategies, from a list of available order execution channels, i.e. means for choosing through which execution channel each order will be sent to a specific market for each specific trading strategy (i.e., The individual selected market trader 28 receives the formatted trade request signal and in response

thereto, the individual selected market trader 28 executes at least a portion of the trade.

The individual selected market trader 28 is separate and apart from the individual trading computer 16. The individual selected market trader 28 can be anyone or anything that causes at least a portion of the trade to be consummated desirably on at least one trade exchange. The individual selected market trader 28 is selected by the individual from a plurality of potential traders, which may be Internet traders such as E-trade, Ameri-trade, Instinet, or Charles Schwab. The individual selected market trader 28 can be a company, an individual and/or a securities market, such as the New York Stock Exchange, the Pacific Stock Exchange, the Midwest Stock Exchange, the NASDAQ Stock Exchange, the over the counter market, the futures market, and/or the commodities market, see col.4 lines 10-33, also see col.6 lines 5-15). Thus it would have been obvious to one of ordinary skill in the art to combine the teachings of Kane and Freeny in order to minimize the costs of submitting the trade request signal (i.e., buying or selling investment items

Re claims 13-15. Kane does not explicitly disclose the system, further comprising a multi-channel means of choosing different order quantity and different maximal allowable Bid/Ask spread for each trading strategy. However, Freeny discloses a multi-channel means of choosing different order quantity and different maximal allowable Bid/Ask spread for each trading strategy (i.e., The predetermined trading criteria include instructions, such as buy and sell orders, or algorithms capable of being used to analyze investment data to generate a trade request to buy and/or sell one or multiples of an investment item or products. For example, the predetermined trading

criteria can be an instruction to buy and/or sell a stock at a predetermined price. In addition, multiple instructions (predetermined trading criteria) can be entered into the individual trading computer 16 to form a trading sequence relating to the same or different investment items. For example, a predetermined trading criterion to buy 100 shares of a stock at \$50.00 and another predetermined trading criterion to subsequently sell the 100 shares of the same stock at \$55.00 can be entered into the individual trading computer 16 before the predetermined trading criterion to buy the 100 shares of stock at \$50.00 has been executed. The predetermined trading criteria can then be sequentially executed if the stock's market price drops to \$50.00 and then rises from \$50.00 to \$55.00. The algorithm can be any algorithm and/or program capable of analyzing investment data to produce the trade request, such as a commercially available investment algorithm, see col.3 lines 22-44). Thus it would have been obvious to one of ordinary skill in the art to combine the teachings of Kane and Freeny in order to minimize the costs of submitting the trade request signal (i.e., buying or selling investment items).

Re claim 16. Kane discloses the API/SDK-based system, further comprising the programming means of receiving order execution particulars through the API/SDK and storing it (i.e., see fig.1elements 31, 27, 28, 29 and elements 17).

Response to Arguments

5. Applicant's arguments filed on 08/06/2007 have been fully considered but they are not persuasive. The applicant argues in substance that claims 1, 3, and 6-16 comply with the written description requirement and thus the rejection of these claims under 112th first paragraph should be withdrawn. The applicant's argument is premised on the notion that the subject matter of the claims need not be described literally in order for the disclosure to satisfy the description requirement. The examiner contends that while this may be true, it is well established that the claims are interpreted in light of the specification, and if the specification fails to support what is recited in the claims, then one skilled in the relevant art is not convinced that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant cited page 8, lines 1-21, and page 8, lines 14-19 of the specification to provide support for the limitation **"so that at least one of the respective trading parameters is prevented from being included in the optimized trading parameters."** However, the only part of the cited page 8 that is even remotely relevant to the claimed limitation above is where the applicant mentions that "the goal is to generate Buy/Sell signals by taking as input all relevant trading information, data, parameters and indicators, and selecting only those of them which produce most accurate predictions of security's price movement." Thus the teaching that only those parameters and indicators that produce most accurate predictions of security's price movement are selected is not the same as preventing at least

one of the respective trading parameters from being included in the optimized trading parameters. For this reason, the examiner maintains the 112th first paragraph rejection.

The applicant further argues that the prior arts of record fails to disclose and a multi-channel machine learning module independently generating building respective self-optimized buy/sell trading signals for each of the trading strategies by further optimizing the respective optimized trading parameters for each of the trading strategies, based on respective trading results from the real-time trading data. The examiner contends that Kane explicitly makes this disclosure (see fig.16 and fig.17, also see col.11 lines 60-66 " carry Forward the Learning During replays (training runs against historical data), a sequence of days is run many times. If the profit is improved upon during a run, the agent values that were in effect at the time of the run are kept, and the agent knowledge base is updated. During live runs with real trading dollars, the system continually updates itself, thereby adapting to changing market conditions. This is highly unique among trading systems.")

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571)272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571)272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

O.O

Application Number**Application/Control No.**

10/613,467

**Applicant(s)/Patent under
Reexamination**

MYR, DAVID

Examiner

OJO O. OYEBISI

Art Unit

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